

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE DEPARTMENT OF LABOR AND INDUSTRY

In the Matter of the Licensing Order
Issued to Matthew J. Barrett

**FINDINGS OF FACT,
CONCLUSIONS, AND
RECOMMENDATION**

This matter came on for hearing before Administrative Law Judge Kathleen D. Sheehy on December 5, 2011, at the Office of Administrative Hearings, 600 North Robert Street, St. Paul, Minnesota. The record closed at the conclusion of the hearing that day.

Christopher M. Kaisershot, Assistant Attorney General, Suite 1200, 445 Minnesota Street, St. Paul, MN 55101-2130, appeared for the Department of Labor and Industry (Department). Matthew J. Barrett (Respondent) appeared for himself without counsel.

STATEMENT OF THE ISSUES

1. Did Respondent fail to comply with the Commissioner's order to appear at the Department and give testimony, in violation of Minn. Stat. § 326B.082, subds. 2 and 11(b)(6) (2010)?¹
2. Did the Respondent perform electrical work without the required registration as an unlicensed individual or without licensure as a journeyman or master electrician, in violation of Minn. Stat. § 326B.33, subds. 2(a) and 13?
3. Did the Respondent provide false or misleading information on a license application and thereby conduct himself in a manner that demonstrates untrustworthiness, in violation of Minn. Stat. § 326B.082, subd. 11(b)(2) and (9)?
4. Is the Respondent unqualified to take the Class A Journeyman Electrician license examination because he fails to meet the minimum qualifications?

The Administrative Law Judge finds that the Respondent committed the violations described above, is unqualified to take the license examination, and concludes that the Licensing Order should be affirmed.

¹ All references to Minnesota Statutes are to the 2010 edition.

Based on the evidence in the hearing record, the Administrative Law Judge makes the following:

FINDINGS OF FACT

1. The Respondent is the son of Timothy Barrett, a licensed master electrician and owner of All Main Street Electric (AMSE) in White Bear Lake, Minnesota. The Respondent worked summers for his father beginning at about age 15. It is unclear what kind of work he did there, but he was not paid for it. When he finished high school, he spent the next several years moving back and forth between Florida and Minnesota. He attended college in Florida and obtained an AA degree from Century College in White Bear Lake in approximately 2006. His degree was in writing and business. In Florida, the Respondent had a variety of jobs, including restaurant work, property research, and telemarketing. After a period of unemployment in 2008, the Respondent returned to Minnesota.²

2. The Respondent is not now and has never been licensed by the Department as a journeyman electrician, master electrician, or electrical contractor.

3. On April 22, 2010, Respondent submitted a Personal Electrical License Examination Application to the Department, seeking to take the license examination for a Class A Journeyman Electrician.³ The Respondent was 27 years old at the time.⁴ Applicants for a Class A Journeyman Electrician license must have at least four years of electrical experience.⁵

4. On the application, the Respondent stated that he had no university, technical college, or other instructional training. He stated, however, that he had worked for AMSE from 1998 to the present and that the type of work performed was wiring for and installing of electrical wiring apparatus and equipment and maintenance and repair of electrical wiring apparatus and equipment.⁶

5. On May 12, 2010, AMSE submitted to the Department an Experience Verification Form for Respondent, completed by Timothy Barrett. On the form, Timothy Barrett stated that the company had employed Respondent full-time from June 1998 to the present. He further stated that the information provided was taken from payroll records and “internship.” He stated that Respondent had worked 120 full-time months installing wiring, apparatus, or equipment for electric light, heat, and power; and that Respondent had worked 120 full-time months maintaining and repairing wiring, apparatus, or equipment for electric light, heat, and power. The instructions that accompanied the form provided that time must be based on 40-hour weeks.⁷

² Exs. 13 & 14; Testimony of Tim Barrett.

³ Ex. 1.

⁴ *Id.*

⁵ Minn. Stat. § 326B.33, subd. 2(b).

⁶ *Id.*

⁷ Ex. 2.

6. The Experience Verification Form submitted by Timothy Barrett purported to verify that Respondent had 240 months, or 20 years, of full-time experience installing and maintaining wiring, apparatus, or equipment for electric light, heat, or power.

7. Payroll records maintained by the Minnesota Department of Employment and Economic Development (DEED) reflect that, at the time the application was filed, Matthew Barrett had worked for his father for one quarter of 2005, one quarter of 2006, one quarter of 2009, and two quarters of 2010. Assuming that each quarter represents three months of full-time work, the DEED payroll records reflect that Matthew Barrett was paid for a total of 15 months of work as of the time he applied for licensure.⁸

8. The Respondent's earnings records from AMSE reflect that he was paid for the last six weeks of 2008, 40 weeks in 2009, and four weeks in 2010. The Respondent's bank account records reflect deposits from AMSE every week or two from mid-March 2010 to the end of May 2010.⁹ These records reflect that Respondent was paid for a total of 62 weeks, or approximately 14-15 months of work as of the time he applied for licensure.

9. On May 24, 2010, the Commissioner issued to Respondent a Registration (No. 089930-RE) to perform electrical work as an unlicensed individual. The registration allowed Matthew Barrett to perform electrical work under the direct supervision of a licensed individual.¹⁰

10. On September 17, 2010, Timothy Barrett appeared with his attorney before Department representatives in connection with an investigation of AMSE's business practices. During the interview, Timothy Barrett stated that Respondent had performed electrical work as an employee of AMSE for a substantial period of time. He did not identify a specific date as to when Respondent's employment had commenced. He stated that Respondent was paid by check and that W-2s were issued to him.¹¹

11. On September 20, 2010, the Department mailed a written request for information to Respondent at the address listed on his license application. Because of the conflict between the work experience reflected in the payroll records and the statement made by his father versus that stated in the license application and verification, the Department requested that Respondent provide copies of all W-2 forms issued by All Main Street Electric to him for the period 1998 through 2009. The Department requested the information by October 4, 2010.¹² Matthew Barrett did not respond to this request.¹³

⁸ Ex. 3.

⁹ Ex. 13.

¹⁰ See Minn. Stat. § 326B.33, subds. 12 & 13.

¹¹ Testimony of John Schultz.

¹² Ex. 5.

¹³ Testimony of Chris Williams.

12. On October 6, 2010, the Department met with Guyan Stream, a licensed Journeyman Electrician, regarding work performed for AMSE. Stream was not and never had been an employee of AMSE but reported that Timothy Barrett had asked him to provide supervision of electrical work on particular jobs in exchange for repairs made to Stream's vehicles. Stream reported that he had supervised Respondent's work for AMSE on three projects: one in Mahtomedi, one in Maplewood, and one in Minneapolis.¹⁴ The work in Mahtomedi and Maplewood likely took place in 2008 or 2009; the work in Minneapolis took place in November and December 2009.¹⁵

13. By letter dated November 15, 2010, the Department ordered Respondent to appear on December 3, 2010, at 10:00 a.m., and to bring with him a complete list of all property addresses where he had performed electrical work since January 1, 2009, as well as the previously requested copies of W-2 forms for 1998-2009.¹⁶ Respondent did not appear as ordered. He did not call beforehand or attempt to make other arrangements for meeting with the Department.¹⁷

14. By letter dated January 19, 2011, Respondent wrote to the Department and apologized for missing the meeting. He said he missed the meeting because of a sick child. He also said that he erred in claiming 240 months of experience and that the actual experience he could claim was "as reported by All Main Street Electric." He said much of his experience was as an unpaid intern. He also said he did not have a list of property addresses where he had worked, either as an intern or an employee, and had only one W-2 form.¹⁸

15. On February 16, 2011, the Department issued a Licensing Order revoking the Respondent's Registration as an Unlicensed Individual, denying his request to take the Class A Journeyman Electrician License examination, and assessing a monetary penalty of \$3,000. The Commissioner also ordered the Respondent to cease and desist from committing further violations and from performing or offering to perform electrical work that requires licensure or registration in Minnesota until appropriate licensure or registration is obtained. The Respondent made a timely request for a hearing.

16. On March 22, 2011, the Department issued a Notice and Order for Prehearing Conference. At the prehearing conference held on May 9, 2011, the Respondent was represented by counsel, who subsequently withdrew. Respondent proceeded to hearing without counsel.

CONCLUSIONS

1. The Administrative Law Judge and the Commissioner of Commerce are authorized to consider the charges against Respondent under Minn. Stat. §§ 14.50 and 326B.082, subd. 8.

¹⁴ Test. of C. Williams; Ex. 7.

¹⁵ Ex. 10; Testimony of Guy Stream.

¹⁶ Ex. 8.

¹⁷ Testimony of Chris Williams.

¹⁸ Ex. 9.

2. The Respondent received due, proper and timely notice of the charges against him, and of the time and place of the hearing. This matter is, therefore, properly before the Commissioner and the Administrative Law Judge.

3. The Department has complied with all relevant procedural legal requirements.

4. The burden of proof is on the Department to show by a preponderance of the evidence that Respondent's Registration as an unlicensed individual is subject to discipline for failing to cooperate with the Commissioner's request to appear and give testimony; for performing electrical work without the required registration; and for providing false or misleading information on the license application.¹⁹

5. The Commissioner of Labor and Industry may request that a person appear to give testimony and produce documents at a time and place indicated by the commissioner. Persons requested to give testimony or produce documents shall respond within the time and in the manner specified by the commissioner.²⁰ The Commissioner may deny, suspend, limit, place conditions on, or revoke a person's license or registration if the commissioner finds that the person failed to cooperate with a commissioner's request to give testimony or produce documents.²¹

6. The Department has proved by a preponderance of the evidence that on December 2, 2010, the Respondent failed to appear to give testimony and produce documents as ordered by the commissioner, in violation of Minn. Stat. § 326B.082, subds. 2 and 11(b)(6).

7. Except as otherwise provided by law, no individual shall perform and supervise any electrical work except for planning or laying out of electrical work unless the individual is licensed by the commissioner as a journeyman electrician and the electrical work is for a licensed contractor who employs the individual or is performed under the supervision of a master electrician also employed by the individual's employer.²² An unlicensed individual shall not perform electrical work required to be performed by a licensed individual unless the individual has first registered with the department as an unlicensed individual.²³

8. Electrical work means the installing, altering, repairing, planning, or laying out of electrical wiring, apparatus, or equipment for electrical light, heat, power, technology circuits or systems, or other purposes.²⁴

¹⁹ Minn. R. 1400.7300, subp. 5.

²⁰ Minn. Stat. § 326B.082, subds. 2(a)(3) & 2(b).

²¹ Minn. Stat. § 326B.082, subd. 11(b)(6).

²² Minn. Stat. § 326B.33, subd. 2(a).

²³ Minn. Stat. § 326B.33, subd. 13.

²⁴ Minn. Stat. § 326B.31, subd. 17.

9. The Department has proved by a preponderance of the evidence that in 2008 and 2009, the Respondent performed electrical work in Mahtomedi, Maplewood, and Minneapolis without the required registration as an unlicensed individual, in violation of Minn. Stat. § 326B.33, subds. 2(a) and 13.

10. The Commissioner may deny, suspend, limit, place conditions on, or revoke a person's license or registration if the commissioner finds that the person has submitted false or misleading information to the state in connection with the application for the license or registration,²⁵ or the person has conducted himself or herself in a manner that demonstrates incompetence, untrustworthiness, or financial irresponsibility.²⁶

11. The Commissioner has proved by a preponderance of the evidence that the Respondent submitted false or misleading information on the application for licensure and that his conduct in connection with the application demonstrates untrustworthiness.

12. The burden of proof is on the Respondent to show that he is qualified for licensure as a Class A Journeyman Electrician.²⁷

13. If the applicant for a license must pass an examination administered by the commissioner in order to obtain the license, then the applicant's complete application must demonstrate that the applicant is qualified to take the examination. The applicant is qualified to take the examination if the applicant meets all requirements for licensure except for passing the examination. If the applicant is not qualified to take the examination, then the commissioner must deny the application.²⁸

14. An applicant for a Class A journeyman electrician license shall have had at least four years of experience, acceptable to the commissioner, in wiring for, installing, and maintaining and repairing electrical wiring, apparatus, or equipment. One year of experience credit for the successful completion of a two-year post high school electrical course approved by the commissioner may be allowed.²⁹

15. Acceptable experience is experience gained while in the employ of a licensed contractor.³⁰ An "employee" of a licensed contractor means, in relevant part, an individual whose compensation is reported on a W-2 form.³¹ No experience credit is allowed for work before age 17.³² Experience credit for electrical work performed after

²⁵ Minn. Stat. § 326B.082, subd. 11(b)(2).

²⁶ Minn. Stat. § 326B.082, subd. 11(b)(9).

²⁷ Minn. R. 1400.7300, subp. 5.

²⁸ Minn. Stat. § 326B.093.

²⁹ Minn. Stat. § 326B.33, subd. 2(b); Minn. R. 3800.3520, subp. 5 B.

³⁰ Minn. R. 3800.3520, subp. 4.

³¹ Minn. R. 3800.3500, subp. 3.

³² Minn. R. 3800.3520, subp. 3 A.

January 1, 2009, by an applicant for a license shall not be granted where the applicant has not registered with or is not licensed by the department.³³

16. The Respondent has failed to prove by a preponderance of the evidence that he has the minimum experience necessary to qualify him to take the Class A Journeyman Electrician license examination.

17. The commissioner may assess monetary penalties against a person required to have a license or registration based on conduct that would provide grounds for action against a licensee or registrant.³⁴ A licensing order may include an assessment of monetary penalties of up to \$10,000 for each violation or act, conduct, or practice committed by the person.³⁵

18. In determining the amount of a penalty assessed under this provision, the commissioner shall take the following factors into account: the willfulness of the violation, the gravity of the violation, the history of past violations, the number of violations, the economic benefit gained by the person committing the violation, and other factors that justice may require.³⁶

19. The Commissioner's penalty assessment is reasonable based on these factors.

Based on the above Conclusions, and for the reasons expressed in the Memorandum attached hereto, the Administrative Law Judge makes the following:

RECOMMENDATION

IT IS HEREBY RECOMMENDED THAT: the Commissioner affirm the Licensing Order issued to Matthew Barrett.

Dated: January 4, 2012

s/Kathleen D. Sheehy

KATHLEEN D. SHEEHY
Administrative Law Judge

Reported: Digitally Recorded

NOTICE

This report is a recommendation, not a final decision. The Commissioner of the Department of Labor and Industry (the Commissioner) will make the final decision after a review of the record. The Commissioner may adopt, reject or modify these Findings

³³ Minn. Stat. § 326B.33, subd. 13.

³⁴ Minn. Stat. § 326B.082, subd. 1.

³⁵ Minn. Stat. § 326B.082, subd. 12(b).

³⁶ Minn. Stat. § 326B.083, subd. 1; Minn. Stat. § 14.045, subd. 3(a).

of Fact, Conclusions, and Recommendations. Under Minn. Stat. § 14.61, the final decision of the Commissioner shall not be made until this Report has been made available to the parties to the proceeding for at least ten days. An opportunity must be afforded to each party adversely affected by this Report to file exceptions and present argument to the Commissioner. Parties should contact Ken Peterson, Commissioner, Minnesota Department of Labor & Industry, 443 Lafayette Road, St. Paul, MN 55155 (651) 284-5126 to learn the procedure for filing exceptions or presenting argument.

If the Commissioner fails to issue a final decision within 90 days of the close of the record, this Report will constitute the final agency decision under Minn. Stat. § 14.62, subd. 2a. The record closes upon the filing of exceptions to the Report and the presentation of argument to the Commissioner, or upon the expiration of the deadline for doing so. The Commissioner must notify the parties and the Administrative Law Judge of the date on which the record closes.

Under Minn. Stat. § 14.63, subd. 1, the agency is required to serve its final decision upon each party and the Administrative Law Judge by first class mail or as otherwise provided by law.

MEMORANDUM

The Respondent applied for licensure as a journeyman electrician at the age of 27, stating that he had 20 years of full-time experience working for a licensed electrical contractor. The Respondent contends that although he declined to appear before the Department to answer questions, and although he declined to testify during the hearing, the record shows that he is more than qualified to take the exam based on testimony provided by his father. With no apparent irony, he also argues that the Department has failed to show that he performed *any* work requiring licensure or registration prior to May 24, 2010, when his registration as an unlicensed individual was issued.

Moreover, when the Department questioned the amount of his work experience, he responded as if Department representatives were improperly harassing him or engaging in some sort of unjustified vendetta having nothing to do with his own conduct. Although the Administrative Law Judge was left with the strong impression that the Respondent's father filled out the application for the Respondent, the Respondent has taken no responsibility whatsoever for signing an application that contained blatant falsehoods and for continuing to defend those falsehoods with more of the same by suggesting that he mistakenly believed the application asked for weeks of experience rather than months. The Department has substantiated both that false statements were made and that they demonstrate untrustworthiness on the part of the Respondent.

As a matter of law, unlicensed work performed between January 1, 2009, and May 24, 2010, the date of the Respondent's registration, does not count as acceptable work experience for purposes of licensure. During this period, the Respondent can verify no more than 15 months of experience; however, the vast majority of it took place before he became registered. In addition, some of this work was supervised by a

person who was not employed by the same company (Guyan Stream), and this work would not count toward the experience requirement either. Because of his appeal, the Licensing Order was stayed, and the Respondent acquired additional paid experience in the remainder of 2010 and 2011. Even considering that additional time, the Respondent's work experience clearly falls short of 48 months, rendering him unqualified to take the examination for a journeyman electrician's license.

During the hearing, the Department attempted to call the Respondent as a witness, and the Respondent stated that he would not testify. Because of concerns that the Respondent would add to his troubles by committing perjury if he were required to testify, the Administrative Law Judge did not require him to take the stand, but advised him that an adverse inference could be drawn from his refusal to testify. On this record, however, it is not necessary to draw an adverse inference to conclude that the Licensing Order should be affirmed.

K.D.S.